

1 can say without boring you to tears. And I'm not asking
2 you to do anything other than go in the back, talk it over
3 and look at each and every bit of evidence and say to
4 yourself: Was this really proven? Is there any backup,
5 other than somebody saying something from hearsay, et
6 cetera, et cetera? Do we have any real evidence, any hard
7 evidence, of Tyreese's involvement in this crime? And if
8 you don't, if there is some reasonable doubt, you have to
9 find him not guilty.

10 Now, this concept of possession in count five is
11 sort of an interesting count. Did he possess it? All I
12 can tell you is there are no statements by him. Just read
13 the instructions. Read them carefully. Go over it word
14 for word. You owe that to Tyreese. And decide if the
15 state provided or the government provided evidence beyond a
16 reasonable doubt that he knowingly possessed the gun, okay,
17 beyond a reasonable doubt. And if you do that, that's all
18 I can ask of you. Okay? But do it slowly. Do it
19 carefully. Read carefully the instructions.

20 It's not just what you think. Possession doesn't
21 mean what it does out in the street. Okay? Sometimes you
22 have to take your own common sense and put it aside,
23 because "possession" doesn't mean that, what you might
24 think it means. Okay? You don't have to have something in
25 your pocket to possess it, but, on the other hand,

1 something could be two feet away from you and you don't
2 possess it legally. Okay? So just give it the time it
3 deserves as far as discussing it with each other.

4 Okay. I think that's about it. Let's see if
5 there is anything else.

6 Ask yourselves why isn't there more physical
7 evidence. Why didn't the government do more physical tests
8 to figure out who belongs to what here?

9 Remember, Luster didn't know any of the specifics
10 to anything, even if Officer Calhoun said it. And anything
11 you think about Officer Calhoun, any of his testimony, I
12 hope you disregard it, because it wasn't right what he did
13 with those. I mean, it wasn't right what he tried to do to
14 make you think that it was a similar print, et cetera. It
15 wasn't right, and you should discount all the rest of his
16 testimony because of that. And some of his testimony
17 doesn't even hurt us, but discount it anyway. Because he
18 shouldn't be given the consideration of you believing what
19 he said after trying to pull that.

20 Okay. That's all. Thank you.

21 THE COURT: Thank you, Mr. Felson.

22 Mr. Andrews, are you prepared to make closing
23 argument on behalf of Walter Pugh?

24 MR. ANDREWS: Certainly, Your Honor.

25 THE COURT: You may proceed.

1 MR. ANDREWS: Good afternoon, ladies and
2 gentlemen. Thank you for your kind attention over the last
3 week. I know it's been difficult. I know sometimes we get
4 long winded and aren't a lot of fun to listen to. And I
5 have watched. I have a peculiar perch from which to watch
6 this trial this time, and I have watched you, and you have
7 all been attentive. And I and Walter both thank you for
8 your attention during this trial.

9 We're here kind of on a unique day, two days
10 before April (sic) 11th, a very patriotic day. And I have
11 had one other interesting thing from this chair over here.
12 When I look out and I look at the reflection on that
13 building over there, for the last five days I have been
14 looking at the American flag flutter on top of the building
15 between here and there. And it's given me a lot to think
16 about in conjunction with this case.

17 And you think, boy, that's an odd thing to bring
18 up. Maybe not if you're an attorney. It's not an odd
19 thing to bring up, because what makes this country
20 different than every other country in the world is that we
21 are a country of laws. We're a country that is based upon
22 the Constitution. We are a country even where the worst of
23 the worst are supposed to get their fair day in court when
24 they come in here.

25 I am not going to walk in this courtroom and try

1 to tell you that these two gentlemen are wonderful guys or
2 that you want them over to your house or that you want to
3 spend any time at all with them. You would think I was an
4 idiot if I told you that, because it isn't true. They are
5 men who live on the street. They are tough men. They are
6 men who hang out with the women you saw on the witness
7 stand, which, I submit to every man on the jury, you would
8 be lucky if you go your whole life without meeting any
9 women vaguely like Shanell and Stephanie. These are not
10 your next door neighbors in the suburbs. These are people
11 who live, as they're quoted as saying, "in the hood."

12 Let me start out by saying there was a bank
13 robbery. We all concede that. We all concede two black
14 men went in and robbed this bank. Are there differences in
15 how we approach it and they approach it? Yes, there are.
16 We look at all this much more carefully than do the police
17 and do the U.S. attorneys.

18 When we are looking, say, at the picture of this
19 gentleman going over, I want you to look carefully at
20 something. You're going to have these in the jury room,
21 both of them. I want you to look down at the tops of them.
22 Look at the end. These are .22's, small-bore guns. Look
23 at the end of this gun. It's a large-bore gun. You can
24 see it. It's not the end of this pistol. It's the end of
25 some other pistol. I don't know whose. I don't know what.

1 But they are different.

2 If you recall, the ATF agent who is sitting back
3 there took the stand, looked at these weapons and said
4 there was no way in the world that she could ever identify
5 either of those or that shotgun as being the weapons in
6 these pictures. And yet -- this is what brings me to the
7 important point here -- Officer Calhoun could look at them,
8 and they were good enough for him. Yep. They were good
9 enough for him. The expert, qualified expert, qualified in
10 courts all over America, can't say it, but it's good enough
11 for Officer Calhoun. He knows the answer.

12 Now, let's look at Officer Calhoun's wonderful
13 investigation that this case is based upon. Start from day
14 one. Day one, Officer Jackson gets an anonymous call from
15 somebody he's known all his life. I don't know how that's
16 anonymous. I have a little problem with it being
17 anonymous. They knew from the beginning they are being
18 called by the jilted ex-girlfriend of my client. They knew
19 it was Shanell. Why didn't they want to say it was
20 Shanell? Why did they say anonymous? Now let's see.

21 What do we know about her? She's been convicted
22 of forgery. She has been convicted of theft. She has been
23 convicted of robbery. Humpf? That's exactly who I want to
24 base my investigation on, a three-time loser liar. Okay.
25 That's who started this and directed it towards my client.

1 On that first day she called, she didn't just
2 call my client -- or call the officer. She called my
3 client's sister. It's Walter. It's Walter. You heard me
4 ask the question this morning. What did you base that upon
5 other than women's intuition? Oh, the guns used and the
6 car.

7 Let's get to that car. Let's start with the car,
8 number one. We know that there is a car of the same
9 identification, stolen where? Trotwood. Same time. Now,
10 just a minute. My client's smart, conniving. He can put
11 it together type guy, right? He goes and uses his sister's
12 car that has mechanical problems? Bad brakes and
13 alternator? I mean, at least Officer Calhoun would
14 acknowledge you would not use Stephanie as the getaway
15 driver because she wasn't reliable. So would you use an
16 unreliable car? It doesn't fit.

17 They have a car in Trotwood that was stolen that
18 looked like this car, and it was used in the robbery. Did
19 they ever go check that car? No. That would be too easy.
20 You can go up and maybe find evidence. I mean, this isn't
21 brain surgery anymore.

22 All you have to do is turn on the TV on Saturday
23 night. You get back-to-back episodes of CSI. If one
24 forensic show isn't enough, we got another one coming this
25 fall. I understand this week on Court TV it's forensic

1 evidence week all week long.

2 And do they have these labs at their disposal?

3 Absolutely. Not only do they have Miami Valley Lab in
4 Dayton, they have Hamilton County Coroner's Lab in
5 Cincinnati. They have the Bureau of Criminal
6 Investigation, which the officer couldn't even correctly
7 identify as being in London, Ohio. If you recall, he said
8 it was in Columbus. In London, Ohio. And finally we have
9 the FBI lab, which I understand to be the finest forensics
10 lab in the world. Do they check anything? No.

11 They relied on two women, one of whom has a
12 criminal record who would make her unworthy to clean your
13 house, because you wouldn't trust her to do it. Now, I
14 submit, if you wouldn't trust her to clean your house, you
15 shouldn't trust anything she has to say.

16 The other woman, Stephanie Luster, interesting
17 woman. She was going to talk to the officers, so we have
18 to get her mother out of jail, who's on her way to prison
19 by the way, to come over and convince her to do the right
20 thing. Get her mom out of jail. She's on her way to
21 prison, and she is going to be the beacon of truth light in
22 the American way? Give me a break. I don't know who the
23 heck this officer thinks he's coming in and trying to kid.
24 You guys look a lot smarter than that to me. These people
25 look like hard core, low-life criminals, both of them.

1 She comes in, and she tells this story. Oh, we
2 go over to Tenikia's, and they let me off, and I go to
3 sleep at 9 o'clock in the morning. Of course, this woman
4 is so concerned about her children, remember she signed a
5 false affidavit to get her kids out of the Hamilton schools
6 into the Fairfield schools. Same woman is riding around
7 with the kid not in his safety seat. She's so concerned.

8 Anyway, she is over there. You remember, Walter
9 was there. Walter wearing a white T-shirt. Hum? White
10 T-shirt. White T-shirt. This gentleman coming over the
11 top here isn't wearing a white T-shirt, is he?

12 What did Bessie tell you? We're supposed to
13 believe Bessie, believe her because she is an honest,
14 straightforward, wonderful woman. That's what the U.S.
15 attorney told you. What did Bessie tell you about Walter?
16 Doesn't wear checks.

17 Oh, Walter is so maniacal and planned this out so
18 well that he thinks, you know, months from now, when I get
19 caught, they're going to call my sister as a witness
20 against me. So I'll wear a checked shirt so my sister will
21 say I would never wear a checked shirt. The truth is
22 obvious. Walter wasn't wearing a checked shirt. Walter
23 was wearing a T-shirt. Walter wasn't at the robbery. He
24 wasn't there.

25 Do we know who was? No. Do we know what car was

1 used? Yes, the one up in Trotwood. Will they get out Bessie's
2 car to show somehow it was used in the robbery? Have they got
3 evidence Walter was in the car? Or Walter Pugh, Tyreese Pugh
4 or Stephanie Luster, because we all know they smoke Black &
5 Mild. Actually, the only evidence I have heard so far that
6 Walter smokes Black & Mild was from one of the two women. His
7 sister, who you should believe, told us he smokes cigarettes,
8 not Black & Milds.

9 You heard the U.S. attorney say you must believe
10 the women that knew them best to find them guilty. I
11 submit that neither of these women are worthy of your
12 belief at all. Skip back to dear Stephanie. They left
13 here on the 24th of April. I'm not asking you to go
14 outside the evidence. All you have to do is look at a
15 calendar starting on April 24th. They left on the 24th, and
16 they stayed in Tennessee that night. They then drove on to
17 Atlanta and stayed there on the 25th. They stayed at the
18 Travelodge for two nights. That would be the nights of the
19 25th and 26th. She says they then went to a relative's house.
20 She said it was the Watsons, but you heard my client's
21 relative say there was no way they stayed there; they
22 stayed at some other house. But they stayed there for two
23 nights. Okay? That takes care of the 27th and 28th.

24 Ladies and gentlemen, there is some time missing
25 here, because they weren't arrested, my client wasn't arrested

1 until May 3rd. If you take her time line and they drove
2 directly back to Hamilton that day, which is what she said
3 on the stand, they're back in Hamilton on the 30th of April,
4 and that's when they got arrested. Because we all know they
5 got arrested as soon as they got back, within that 24-hour
6 period after they got back.

7 I submit to you, someone who could not tell the
8 story of a trip which covers approximately six-and-a-half to
9 seven days and cover all six-and-a-half to seven days is
10 lying to you. She's got enough that she could lie about,
11 enough to make the U.S. Attorneys, the FBI, the Hamilton
12 police for sure happy as cats covering whatever, but the
13 truth of the matter is she doesn't remember a damn thing about
14 that trip. Very simply, she is -- either she is of such a
15 low IQ that she can't remember, or, number two, she was so
16 frigging high during all of it that she doesn't know what
17 happened. And if you're looking at that, you can't relate
18 what happened over a seven-day period of time, how can you
19 believe that she can correctly relate to you these two
20 incidents out of those days?

21 First of all, let's look at the money scene. If
22 you are to believe her, which is your right as a juror -- I
23 don't think you should, as Walter's attorney, but if you were
24 to believe her, there were crumpled tens and twenties covering
25 what was described as a corner of the bed.

1 I want you to think of -- here's a five. I want
2 you to think how much money it takes to make a stack of
3 \$153,000. That's five dollars. We know from the testimony
4 of the security person who did the audit there was \$40,000
5 in one-hundred dollar bills. That would make approximately
6 400 one-hundred dollar bills. That's a whole bunch. Okay?
7 I mean, I don't think I have ever seen that many, not
8 legitimately anyway. So where did they all go?

9 Walter and Tyreese rob the place. They drive
10 like demons. According to the government time line, they
11 only got a couple minutes leeway between robbing the bank at
12 2:32 and making it down to Bessie's before the 3:00 change
13 of shift. But somehow they fight their way through
14 Hamilton traffic, and they make it. And they immediately go
15 to Tenikia's, and they immediately take off for Tennessee.
16 Now remember, this is Stephanie's testimony.

17 Where did the money go?

18 They're running like mad to get out of town before
19 they even know. Where did the money go? It certainly wasn't
20 the money she saw on the bed. That's a bunch of tens and
21 twenties, not 400 one-hundred dollar bills.

22 I submit to you, assuming that they bought
23 everything in all of this, add it up. It's not \$153,000.
24 I don't care what it is. It's not close. Where did the
25 money go? They don't have an explanation for it. We can't

1 give you one, because we don't know.

2 Let's go back to Officer Calhoun. What do we know
3 the police did? At least according to Officer Calhoun in his
4 own notes we asked him about this morning, we know when he
5 got a call or actually got information through Detective
6 Nugent, who told him that these two gentlemen were robbing
7 dope dealers in Dayton. Dangerous trade, but a profitable
8 one.

9 I draw your attention to one instruction of all the
10 instructions the judge is going to give. That instruction
11 is you should only be looking at the particular crime charged
12 in the indictment. What other nefarious acts could these
13 people be up to? Hanging out with Ms. Luster and Shanell,
14 the mind only boggles at what they could have been up to. But
15 they weren't robbing the bank.

16 They may have been robbing dope dealers. You're
17 going to see a conviction on Tyreese. He's been convicted
18 of a drug-related offense. Were they selling dope? Robbing
19 dope dealers? I don't know. And you know what? Neither do
20 the U.S. attorneys. Neither does Officer Calhoun, because
21 he came up with the concept of investigation I've seen over
22 24 years of the practice of law, both as a prosecutor, as a
23 defense attorney, as appointed counsel here before you. I've
24 heard this many, too many, times: It's good enough for me.
25 Actually, we used to use it when I was a construction

1 worker as a pejorative term for governmental action. When
2 we'd put up a greenhouse -- I was building greenhouses in
3 college -- we would always say when something was kind of --
4 I'll use the phrase half-assed done, well, it's good enough
5 for government work.

6 Well, we're in here. And is it good enough for
7 government work? You're going to be the arbiters of that
8 very shortly. We know that the man going over this counter
9 was a 30-ish agile man. You know from what you have heard
10 of my client he's about 45 years old. You know from what
11 they could identify, which was very little in the bank, he
12 was a young, spry individual who was able to leap over that
13 counter. I assure you at 51 I am not able to do it. I don't
14 know about anybody else.

15 We know that the shirt's wrong. We know that the
16 muzzle on the gun is too big. We know that there was another
17 car stolen at the same time matching the car used in the
18 robbery. We know that the officers did nothing to check out
19 any forensic evidence on anything other than our cookie cutter
20 shoe thing. You know this cookie cutter; take the shoe and
21 say, gee, does that match? Doesn't look like it to me.

22 Could this have all been done correctly? Yes, it
23 could have been. Were the means at their disposal? Yes, they
24 were. Did they do it? No, they did not.

25 Now, I ask this jury to not deliberate and give the

1 government it's good enough for me as an answer. Yes, these
2 men are not the nicest guys in the world. But they are also
3 not the two men robbing this bank. They have a right as
4 American citizens to be treated fairly by you; even if they
5 weren't American citizens, to be treated fairly by you -- but
6 they are -- to have you go back and duly consider not only
7 everything that was done, but to consider everything that
8 wasn't done.

9 Why wasn't it done? Why are we sitting here
10 today with this absolute lack of evidence in so many areas
11 where it could be conclusive? It's very simply because, as
12 an investigation, it was good enough for him. Well, I'm
13 hoping, ladies and gentlemen of the jury, it wasn't good
14 enough for you.

15 Finally, just to paraphrase, and I certainly do not
16 look like the actor who said this. I want you to keep in the
17 back of your mind, with those people rushing to get out of
18 town, with them rushing all over all these other places, as
19 it was stated in a movie, "Show me the money." I looked
20 through all this, and we have what? \$56.

21 Thank you.

22 THE COURT: Thank you, Mr. Andrews.

23 Ms. Cross, do you wish to make closing argument?

24 MS. CROSS: Briefly, Your Honor.

25 THE COURT: All right.

1 MS. CROSS: Ladies and gentlemen, there's a
2 saying: When the law is against you, argue facts. When
3 the law and the facts are against you, blame the police.
4 That's exactly what's going on in this case.

5 The defense makes much ado about testing. Test
6 what? How would testing these new clothes with the tags
7 still on them prove that it was the defendants inside the
8 bank? Why would testing this gun, which was found with
9 Tyreese, why would they test it for prints? It was found
10 with him. They expected his prints to be on it.

11 I don't smoke, and maybe some of you do. But I
12 have seen people smoke, and I know that, when people smoke,
13 the smoke goes out to the air, and, if you stand there about
14 two or three seconds, it will dissolve. That's exactly what
15 this defense is about, smoke and creating lots of it. But,
16 if you sit and you think about it for three seconds, you'll
17 realize and you'll see it dissolve. It doesn't make sense.
18 The defense wants you not to use your common sense, not to
19 draw upon your experiences of your everyday lives in deciding
20 this case. They want you to ignore your common sense.

21 If Walter and Tyreese Pugh were so innocent, why
22 were they running? Why were they trying to get out of town?
23 If it weren't them, why were they trying to get out of town?

24 And I asked you in the beginning to listen to how
25 they were going to attack Bessie. Did you hear the attack

1 on Bessie? No one attacked Bessie. And she was the one
2 that says, "Walter, that looks like you, and that other one
3 looks like Tyreese, my nephew."

4 Ladies and gentlemen, Mr. Andrews is absolutely
5 right; these are not nice men. These are men that carry
6 these guns into a bank and harass and intimidate and scare
7 the living daylights out of tellers. That's who these men
8 are. And they say don't listen to the government witnesses.
9 Can't be relied upon. Don't rely on what they have to say.
10 I say to that, ladies and gentlemen, and I ask you this
11 question: Can you rely on this?

12 (Playing excerpt of audiotape.)

13 Ladies and gentlemen, I submit to you, you can
14 rely on that. Thank you.

15 THE COURT: Thank you, Ms. Cross.

16 Ladies and gentlemen, I'm now going to give you
17 your final instructions on how to deliberate. You'll now
18 retire to the jury room to begin your deliberations. Before
19 you do that, however, I'd like to give you a few practical
20 instructions regarding how you should conduct your deliberations.

21 When you retire to the jury room, the first thing
22 you should do is elect a foreperson. This person will be
23 your spokesperson here in the courtroom.

24 All 12 of you must be present in the jury room
25 when you are deliberating. You may take breaks whenever

1 you want, for instance, if someone would like to smoke a
2 cigarette, but you should cease your deliberations until
3 everyone has returned to the jury room.

4 You should decide what time in the morning you
5 wish to start your deliberations. You may elect to start
6 earlier in the morning if that is more convenient for you;
7 however, you should not start any later than 9 a.m.

8 Remember that you cannot begin your deliberations
9 each day until all 12 of you have arrived.

10 Finally, you may deliberate as late as you wish.
11 You should deliberate at least until 4:30 p.m. And I'm
12 going to have Steve check with you this afternoon to see if
13 you want to go later. That's fine with the Court. You can
14 go as late as you want, or, if you want to go home, that's
15 fine, too.

16 If you do decide to go later than 4:30 today, you
17 just need to let me know so we can order you dinner and so
18 we can prepare to have the marshals get dinner for you.

19 Once you decide when you want to recess for the
20 day, please tell Mr. Snyder. When you are ready to leave
21 for the day, you will come back into the courtroom, and I'll
22 give you our regular admonition.

23 Now, as jurors numbers 13 and 14 must know by now,
24 I keep talking about the 12 of you, and I want to thank both
25 of you for being such wonderful alternates. It looked like

1 on Friday, with the trial running longer, I was fearful that
2 we were going to lose two jurors then, and we definitely
3 would have needed your services. As it turned out, we are
4 fortunate to have all of you up to this point in time. So
5 I'm going to excuse our alternates. I want to thank both
6 very much for serving. I know that serving is a sacrifice,
7 but I hope you also found that it was a privilege.

8 I'm going to ask you not to talk to anyone about
9 the case until there has been a verdict. That's just in
10 case, if something should happen to one of the jurors for
11 any reason during deliberations, we can call you back in to
12 participate in deliberations.

13 If you would like to know the outcome, if you will
14 give Steve your phone numbers, we will be glad to call you
15 as soon as we have a verdict and let you know what has
16 occurred.

17 With that, ladies and gentlemen, I'm going to send
18 you back to the jury room to begin your deliberations.

19 (Jury excused to deliberate at 3:30 p.m.)

20 Counsel, I want everybody to stay until -- actually,
21 for the next hour, just stay somewhere here on the 8th floor.
22 The marshals can take the defendants downstairs if you want to.
23 But, just in case we have any questions or anything, I would
24 like you to be at hand so we can deal with that as promptly
25 as possible and get the jury back deliberating.

1 We'll check with them about a quarter after 4
2 probably to see what they want to do, if they have any idea
3 of whether they want to work later today or if they want to
4 go home and come back tomorrow. As soon as we have a sense
5 of that, as soon as we hear from them on that, we'll let
6 you know.

7 So hang out here, or we've got a lawyer's lounge
8 down the hall if you want to use that.

9 U.S. Attorney's Office, do you have a satellite
10 office here?

11 MR. THAPAR: Down on the second floor.

12 THE COURT: If you're going to be down there,
13 just make sure Steve's got the number for that.

14 And defense counsel are welcome to stay in the
15 courtroom if you like.

16 Any questions or anything?

17 Okay. See you all in a little bit.

18 (Court in recess at 3:32 p.m.)

19 (In open court at 5:45 p.m.)

20 THE COURT: Ladies and gentlemen, the Court has
21 been advised that the jury wishes to end its deliberations
22 for today and reconvene tomorrow morning.

23 Have you decided what time you're going to come
24 in?

25 Let's see. Number 3, are you the foreperson?

1 JUROR NO. 3: No, I'm not.

2 THE COURT: Number 4? Anybody can answer that.

3 JUROR NO. 4: Nine o'clock.

4 THE COURT: Okay. You don't need to come into
5 the courtroom. And counsel, I'll speak with you afterwards
6 about your availability. You can go right to the jury room.

7 Do they need to go upstairs and sign in?

8 Go upstairs and sign in, then go to the jury room.

9 Once all 12 of you are there, you can begin your deliberations.
10 And just remember, if you want to take a break for any
11 reason, that's fine, but you can't -- you must cease your
12 deliberations and you can't resume them again until all 12
13 people are in the jury room. We'll check with you in the
14 morning about whether or not you think you will be here
15 through the lunch hour. If you are going to be here then,
16 we will provide lunch again.

17 I think that's all, except to remind you, please
18 don't discuss this case with anyone, including your fellow
19 jurors, people involved in the trial or anyone else until
20 you resume deliberations tomorrow in the jury room.

21 Have a nice evening and just report to the jury
22 room tomorrow morning.

23 (Jury excused for the day.)

24 Counsel, I would like you to be within 10 minutes
25 of the courtroom tomorrow so that, if we do have a question

1 or anything, we can handle it immediately.

2 * * *

3 COURT IN RECESS AT 6:00 P.M.

4

5

6 C E R T I F I C A T E

7 I, Betty J. Schwab, the undersigned, do
8 hereby certify that the foregoing is a correct
9 transcript from the record of the proceedings in
10 the above-entitled matter.

11

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BETTY J. SCHWAB, RPR
Official Reporter

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